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## A Long Way From Home: Restrictions on Federal Funding of Abortions for Peace Corps Volunteers

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# A LONG WAY FROM HOME: RESTRICTIONS ON FEDERAL FUNDING OF ABORTIONS FOR PEACE CORPS VOLUNTEERS

ELIZA T. MURRAY\*

**Abstract:** Since 1979, Congress has prohibited the Peace Corps from funding Volunteer abortions even in cases of rape, incest, or endangerment of the Volunteer's life. This approach directly contrasts with domestic abortion policies, such as Medicaid and those in federal prisons, which contain funding exceptions in these dire circumstances. Affording female Peace Corps Volunteers the same rights enjoyed by other federal employees who receive health care from the government should be uncontroversial. Domestic appropriations politics, however, cloud the focus of this policy, which should be Volunteer health and safety, and thwart efforts for legislative change. Meanwhile, Female Volunteers risk their safety and give two years of their lives to serve in remote regions of the world. In the name of fairness, the Peace Corps Act should be permanently amended to ensure that politics play no role in the provision of comprehensive medical care to female Volunteers.

## INTRODUCTION

In 1984, while serving as a Peace Corps Volunteer in Nepal, Carol Clark, then twenty-two years old, was raped on two separate occasions by a Nepalese Peace Corps employee three months into her twenty-seven month service.<sup>1</sup> Compounding the trauma of sexual assault, Clark became pregnant as a result of the first attack and faced a diffi-

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\* Executive Comments Editor, BOSTON COLLEGE JOURNAL OF LAW & SOCIAL JUSTICE (2012–2013). The author served in the Peace Corps in Jamaica from 2008 to 2010.

<sup>1</sup> Anna Schecter, *Abortion or Quit: Raped Peace Corps Volunteer Forced to Choose*, ABC NEWS: THE BLOTTER (May 10, 2011), <http://abcnews.go.com/Blotter/abortion-quit-raped-peace-corps-volunteer-forced-choose/story?id=13538455#TxxA9bjm35M>; *Peace Corps Fact Sheet*, U. S. PEACE CORPS 2 (Jan. 9, 2012), [http://multimedia.peacecorps.gov/multimedia/pdf/about/pc\\_facts.pdf](http://multimedia.peacecorps.gov/multimedia/pdf/about/pc_facts.pdf). By executive order, President John F. Kennedy established the Peace Corps on March 1, 1961. *Peace Corps Fact Sheet*, *supra*, at 2. Since its inception more than 200,000 Americans have served in 139 host countries. *Id.* at 1. Currently, 9095 Volunteers are working within 76 host countries and make a 27 month commitment to service, providing technical assistance in six program areas: education, youth and community development, health, business and information communication technology, agriculture, and environment. *Id.* at 2.

cult choice: to obtain an abortion or quit the Peace Corps.<sup>2</sup> The latter option would mean the end of a life-long dream of helping others while serving her country.<sup>3</sup> Reflecting on the best option for her life at that juncture, Clark, who had “not [been] pro-choice until that moment,” decided to have an abortion.<sup>4</sup> While stationed abroad, Clark was completely dependent on the Peace Corps for her medical care.<sup>5</sup> Bound by unyielding restrictions disabling the agency from providing Clark with access to the range of medical care she required, the Peace Corps evacuated her thousands of miles away to Hawaii for the procedure.<sup>6</sup> Due to these restrictions, the Peace Corps could not pay for the actual abortion procedure.<sup>7</sup> Clark, living off of a modest volunteer stipend covering only basic living expenses in Nepal, was forced to cover the cost of the procedure.<sup>8</sup> Faced with the prospect of ostracism by her devoutly Christian family, who told her that she was not welcome home if she was pregnant, Clark had to ask the family of her closest friend back home to pay for the abortion.<sup>9</sup>

Since 1979, Congress, through annual Foreign Operations appropriations legislation, has prohibited the Peace Corps from covering the expense of Volunteer abortions.<sup>10</sup> There is no exception for instances of rape, incest, or life-threatening circumstances.<sup>11</sup> Of the over nine thousand U.S. citizens currently serving in the Peace Corps around the world, sixty-one percent are women with an average age of

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<sup>2</sup> See Schecter, *supra* note 1.

<sup>3</sup> See *id.*

<sup>4</sup> See *id.*

<sup>5</sup> See Sarah Lipton-Lubet, *Raped in the Peace Corps? U.S. Policy Makes a Bad Situation Worse*, AM. CIVIL LIBERTIES UNION: BLOG OF RIGHTS (May 11, 2011, 10:53 AM), <http://www.aclu.org/blog/reproductive-freedom/raped-peace-corps-us-policy-makes-bad-situation-worse>.

<sup>6</sup> See *id.*; Schecter, *supra* note 1.

<sup>7</sup> See Lipton-Lubet, *supra* note 5.

<sup>8</sup> See *id.*; *Peace Corps Fact Sheet*, *supra* note 1, at 2; Schecter, *supra* note 1.

<sup>9</sup> See Schecter, *supra* note 1.

<sup>10</sup> Consolidated Appropriations Act of 2012, Pub. L. No. 112-74, 125 Stat. 787, 1181-82 (2011) (stating, with the same language appearing every year in similar appropriations legislation, that “none of the funds appropriated under this heading shall be used to pay for abortions”); Lipton-Lubet, *supra* note 5.

<sup>11</sup> 125 Stat. at 1181-82; see Lipton-Lubet, *supra* note 5. It is clear that Peace Corps appropriations do not provide for exceptions in cases of rape, incest, or life endangerment because other sections of the 2012 Consolidated Appropriations Act, such as appropriations to the Departments of Labor, Health and Human Services, and Education explicitly use language providing for such exceptions. See, e.g., § 507, 125 Stat. at 1111 (stating that “limitations established in the preceding section shall not apply to an abortion—(1) if the pregnancy is the result of an act of rape or incest; or (2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself”).

twenty-eight.<sup>12</sup> Peace Corps Volunteers are public servants; they are accorded status as federal employees and are funded as employees through federal taxes.<sup>13</sup> Volunteers serve in remote locations in developing countries where safe and adequate medical care may be hundreds of miles away in major cities or not available at all.<sup>14</sup> Furthermore, statistics show that within a decade, over one thousand American women serving in the Peace Corps had experienced sexual assault or rape while serving as Volunteers.<sup>15</sup> A 2012 report compiled by the Peace Corps' Inspector General revealed that Volunteers "experience higher rates of rape . . . than any of the 86 countries that responded to the United Nations crime statistics analysis."<sup>16</sup> These facts are alarming on their own, but when coupled with the harsh restrictions on abortion funding for Volunteer victims of sexual assault, the situation becomes dire.<sup>17</sup>

Although the Peace Corps has recently adopted new security protocols to better monitor and ensure the safety of Volunteers, these important steps are undercut because Congress continually prohibits the agency from providing a full range of essential medical care, including abortion in exigent circumstances.<sup>18</sup> The continued denial of abortion funding imposes a great risk on those women who choose to

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<sup>12</sup> *Peace Corps Fact Sheet*, *supra* note 1, at 1.

<sup>13</sup> See Lex Rieffel, *Reconsidering the Peace Corps*, BROOKINGS INST. POL'Y BRIEF SERIES #127, 2 (Dec. 2003), available at [http://www.brookings.edu/~media/Files/rc/papers/2003/12/globalgovernance\\_rieffel/pb127.pdf](http://www.brookings.edu/~media/Files/rc/papers/2003/12/globalgovernance_rieffel/pb127.pdf); see also The Peace Corps Act, 22 U.S.C. §§ 2502(a), 2504(a) (1961).

<sup>14</sup> See Lipton-Lubet, *supra* note 5.

<sup>15</sup> See Press Release, Lautenberg Press Office, Lautenberg Provisions Included in Foreign-Ops Funding Bill (Sept. 21, 2011), available at <http://lautenberg.senate.gov/newsroom/record.cfm?id=334139> [hereinafter Lautenberg Provisions Included]; Lipton-Lubet, *supra* note 5; see also Office of Safety & Sec., Peace Corps, Annual Report of Volunteer Safety (Dec. 2010), available at <http://multimedia.peacecorps.gov/multimedia/pdf/policies/volsafety2009.pdf> (analyzing the rates of sexual assault in the Peace Corps from 1999 to 2009).

<sup>16</sup> OFFICE OF THE INSPECTOR GEN., PEACE CORPS, FINAL AUDIT REPORT: PEACE CORPS VOLUNTEER SAFETY AND SECURITY PROGRAM 1 (2010), available at [http://multimedia.peacecorps.gov/multimedia/pdf/policies/PC\\_Safety\\_and\\_Security\\_Final\\_Audit\\_Report\\_IG1008A.pdf](http://multimedia.peacecorps.gov/multimedia/pdf/policies/PC_Safety_and_Security_Final_Audit_Report_IG1008A.pdf).

<sup>17</sup> See *Congress Should Lift the Ban That Denies Peace Corps Volunteers Coverage for Abortion Care*, AM. CIVIL LIBERTIES UNION 1–2 (Sept. 2011), [http://www.aclu.org/files/assets/aclu\\_factsheet\\_on\\_peace\\_corps\\_abortion\\_coverage.pdf](http://www.aclu.org/files/assets/aclu_factsheet_on_peace_corps_abortion_coverage.pdf) [hereinafter *Congress Should Lift the Ban*].

<sup>18</sup> See Kate Puzey Peace Corps Volunteer Protection Act of 2011, Pub. L. No. 112–57, 125 Stat. 736, 736–46 (codified at 22 U.S.C. § 2507a) (2011); *Discriminatory Restrictions on Abortion Funding Threaten Women's Health*, NARAL PRO-CHOICE AM. FOUND. 1, 5, 7 (Jan. 1, 2010), <http://www.prochoiceamerica.org/assets/files/abortion-access-to-abortion-women-government-discriminatory-restrictions.pdf> [hereinafter *Discriminatory Restrictions on Abortion Funding*].

leave the comforts and relative safety of the United States for two years of service abroad.<sup>19</sup>

Peace Corps policy lies in stark contrast to abortion funding policies currently in place in the United States.<sup>20</sup> Although federal and state legislation, both restrict abortion funding for women receiving health care through government health plans, many funding schemes allow exceptions in cases of rape, incest, and life endangerment.<sup>21</sup> Even ardent pro-life legislation makes exceptions in these critical circumstances.<sup>22</sup> In this sense, the ban on abortion funding for Peace Corps Volunteers lacks parity with federal policy applied to other insurance plans on which many American women depend, such as Medicaid.<sup>23</sup> In light of these more permissive domestic policies, coverage of abortions for Peace Corps Volunteers in exigent circumstances “should be uncontroversial.”<sup>24</sup>

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<sup>19</sup> See Lautenberg Provisions Included, *supra* note 15; *Congress Should Lift the Ban*, *supra* note 17, 1–2.

<sup>20</sup> See Heather D. Boonstra, *The Heart of the Matter: Public Funding of Abortion for Poor Women in the United States*, 10 GUTTMACHER POL’Y REV. 12, 13–15 (2007), available at <http://www.guttmacher.org/pubs/gpr/10/1/gpr100112.html>.

<sup>21</sup> Jennifer Keighley, Note, *Health Care Reform and Reproductive Rights: Sex Equality Arguments for Abortion Coverage in a National Plan*, 33 HARV. J.L. & GENDER 357, 365 (2010); see Boonstra, *supra* note 20, at 13–15.

<sup>22</sup> See, e.g., No Taxpayer Funding for Abortion Act, H.R. 3, 112th Cong. § 308 (2011). The Act has yet to be voted on in the Senate. No Taxpayer Funding for Abortion Act, S. 906, 112th Cong. (2011). House Bill 3 prohibits any funds authorized and appropriated by federal law from being expended on abortion. H.R. 3. Likewise, the Act provides for conscience protections to protect the civil rights of health care providers who decline to perform abortions. *Id.* § 310. It does, however, include an exception for abortion funding, stating that restrictions:

shall not apply to an abortion—(1) if the pregnancy is the result of an act of rape or incest; or (2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness that would, as certified by a physician, place the woman in danger of death unless an abortion is performed, including a life-endangering physical condition caused by or arising from the pregnancy itself.

*Id.*

<sup>23</sup> Hillary Hansen, Note, *Fundamental Rights for Women: Applying Log Cabin Republicans to the Military Abortion Ban*, 23 HASTINGS WOMEN’S L.J. 127, 130–31 (2012); *Congress Should Lift the Ban*, *supra* note 17, at 2.

<sup>24</sup> See Sarah Lipton-Lubet, *America’s Angels” One Step Closer to the Health Care They Deserve*, AM. CIVIL LIBERTIES UNION: BLOG OF RIGHTS (Sept. 21, 2011, 5:41 PM), <http://www.aclu.org/blog/reproductive-freedom-womens-rights/americas-angels-one-step-closer-health-care-they-deserve> [hereinafter Lipton-Lubet *America’s Angels*]; see, e.g., Consolidated Appropriations Act, 2012, Pub. L. No. 112–74, 125 Stat. 787, 1181–82 (2011). Often, the term “maternal life endangerment” is used to describe when a pregnancy so threatens a woman’s life that she is required to terminate. See, e.g., No Taxpayer Funding for Abortion Act, H.R. 3, 112th

Though there have been attempts to overturn these prohibitions on Peace Corps funding, advocates have not garnered enough congressional support.<sup>25</sup> Until a change in these policies is permanently codified within the Peace Corps Act, for a Volunteer “experiencing an unintended pregnancy, a medically safe abortion may be many thousands of miles and [thousands of] dollars away.”<sup>26</sup>

Part I of this Note traces the inclusion and rejection of abortion funding exceptions for cases of rape, incest, or life endangerment in federal policy since the 1970s. This section underscores the illogical absence of these exceptions for Peace Corps Volunteers by highlighting that such exceptions exist even in extreme pro-life legislation affecting other American women dependent on government health care. Part II considers Peace Corps policy alongside the policies of other federal health care schemes. This section cites recent changes in Peace Corps sexual assault policies without a consonant change in Volunteer abortion protections to illustrate the contentious political undercurrents in Peace Corps policymaking.<sup>27</sup> Part III addresses the difficulty of mounting a constitutional challenge to the Peace Corps abortion funding restrictions because Peace Corps service is voluntary. This section discusses how the government’s interest in funding abortion may be more compelling, however, when focusing only on abortion in exigent circumstances, but that these interests are clouded by the role of the Peace Corps within U.S. foreign policy. Finally, Part IV calls for a permanent codification of an emergency ex-

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Cong. (2011). This term, however, imputes motherhood onto the woman and in turn, calls into issue classifications of fetal “personhood.” *See id.*

<sup>25</sup> *See, e.g.*, S. 1601, 112th Cong. (1st Sess. 2011). Senator Patrick Leahy introduced Senate Bill 1601 to amend the total ban on abortion care for Peace Corps Volunteers to provide access to abortions in cases of sexual assault, incest, and life endangerment. *Id.* The Senate Subcommittee on State, Foreign-Affairs, and Related Programs approved the funding measure on September 21, 2011. Press Release, Planned Parenthood Federation of America, Planned Parenthood Commends Senate Appropriations Committee for Defending Women’s Reproductive Rights in Foreign-Ops Spending Bill (Sept. 22, 2011), *available at* <http://www.plannedparenthood.org/about-us/newsroom/press-releases/planned-parenthood-commends-senate-appropriations-committee-defending-womens-reproductive-right-37924.htm> [hereinafter Planned Parenthood Commends Senate Appropriations Committee].

<sup>26</sup> The Peace Corps Act, 22 U.S.C. §§ 2501–2523 (2006); Boonstra, *supra* note 20, at 15. The Peace Corps Act, signed into law by President John F. Kennedy in 1961, formally recognizes the Peace Corps as an independent government agency. §§ 2501–2523; *Peace Corps Fact Sheet*, *supra* note 1, at 2.

<sup>27</sup> This Note reflects only the author’s thoughts on the United States Peace Corps’ restrictions on abortion funding even in cases of rape, incest, or endangerment of life and does not reflect the author’s feelings on the institution of the Peace Corps as a whole or its mission abroad.

ception for abortion funding within the Peace Corps Act. This step would remove agency health care policy from the volatility of American politics and reconcile the rights of female Volunteers with those of other American women.

# I. FEDERAL FUNDING FOR ABORTION COVERAGE: PROGRESS, REGRESS, AND MOVEMENT TOWARD CHANGE

Over the last four decades abortion policy has been “among the most contentious of political and legal issues in the United States.”<sup>28</sup> In the decade before the Supreme Court’s 1973 decision in *Roe v. Wade* recognizing a woman’s constitutional right to an abortion, there seemed to be a trend of liberalization of funding and access policies for indigent women under Medicaid.<sup>29</sup> During the 1960s and early 1970s, states began to legalize abortion and allow Medicaid to reimburse women for legal abortions under a particular state’s laws.<sup>30</sup> For women who qualified for Medicaid, a legal abortion was treated like any other medically necessary procedure.<sup>31</sup> Reacting to the legalization of abortion across the states under *Roe*, however, some states be-

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<sup>28</sup> Jon F. Merz et al., *A Review of Abortion Policy: Legality, Medicaid Funding, and Parental Involvement, 1967–1994*, 17 WOMEN’S RTS. L. REP. 1, 1 (1995); see Julia L. Ernst et al., *The Global Pattern of U.S. Initiatives Curtailing Women’s Reproductive Rights: A Perspective on the Increasingly Anti-Choice Mosaic*, 6 U. PA. J. CONST. L. 752, 765–66 (2004); Keighley, *supra* note 21, at 360–61.

<sup>29</sup> *Roe v. Wade*, 410 U.S. 113, 163 (1973); see Merz et al., *supra* note 28, at 6–7. The Court held:

[F]or the period of pregnancy prior to this “compelling” point [(approximately the end of the first trimester)], the attending physician, in consultation with his patient, is free to determine, without regulation by the State, that, in his medical judgment, the patient’s pregnancy should be terminated. If that decision is reached, the judgment may be effectuated by an abortion free of interference by the State.

*Roe*, 410 U.S. at 163.

<sup>30</sup> Medicaid, 42 U.S.C. §§ 1396–1396w-5 (2006 & Supp. IV 2011); see Merz et al., *supra* note 28, at 7. Founded in 1965, Medicaid is a jointly state-federally funded program designed to provide medical care to indigent Americans. §§ 1396–1396w-5; *Harris v. McRae*, 448 U.S. 297, 301 (1980) (stating that the Medicaid programs provide “federal assistance to States that choose to reimburse certain costs of medical treatment for needy persons. Although participation in the Medicaid program is entirely optional, once a State elects to participate, it must comply with the requirements of Title XIX”). The Social Security Amendments of 1972 required all participating states to cover reproductive health services, instead of allowing states to choose whether to provide these services. Social Security Amendments of 1972, Pub. L. No. 92–603, § 299E, 86 Stat. 1329, 1462 (codified as amended at 42 U.S.C. § 1396d (2006)).

<sup>31</sup> See Merz et al., *supra* note 28, at 6–7.

gan to restrict funding for abortion under Medicaid.<sup>32</sup> Although many of these restrictions reduced funding for “elective” abortions, the erosion of funding for therapeutic abortions—abortions necessary for serious health reasons—soon followed.<sup>33</sup> This pattern culminated in legislation that perpetually curbs the use of federal funds to pay for abortion.<sup>34</sup> Each successive legislative action in turn alters abortion funding in cases of rape, incest, and the preservation of the life and health of the woman.<sup>35</sup>

#### A. *The Hyde Amendment and Increased Restrictions for Abortion Coverage Under Medicaid*

Three years after *Roe v. Wade*, legislative restrictions began chipping away at this newfound access to abortion for women who could not otherwise afford abortion care under private health insurance.<sup>36</sup> In 1976, Congress passed the Hyde Amendment, over presidential veto, which restricted the use of federal funds allocated by the annual appropriations bill for the Department of Health and Human Services for abortion procedures.<sup>37</sup> The Amendment, named after chief sponsor Illinois Republican Congressman Henry Hyde, primarily affected Medicaid, a government program that provides federal and state funds for medical care for low-income individuals.<sup>38</sup> The Hyde Amendment has been a continual “rider” on appropriations bills since its adoption.<sup>39</sup>

Each year, upon the Amendment’s reauthorization as a part of the appropriations process, Congress faces a debate about the circumstances under which federal funding for abortion should be al-

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<sup>32</sup> See Patricia A. Butler, *The Right to Medicaid Payment for Abortion*, 28 HASTINGS L.J. 931, 943 (1977); Merz et al., *supra* note 28, at 7.

<sup>33</sup> See Merz et al., *supra* note 28, at 6–7.

<sup>34</sup> Hyde Amendment, Pub. L. No. 94–439, § 209, 90 Stat. 1418, 1434 (1976); see Boonstra, *supra* note 20, at 12–13; Merz et al., *supra* note 28, at 7 n.44, 8.

<sup>35</sup> See Boonstra, *supra* note 20, at 12–14; Merz et al., *supra* note 28, at 7 n.44, 8.

<sup>36</sup> *Roe*, 410 U.S. at 113; Boonstra, *supra* note 20, at 12; Merz et al., *supra* note 28, at 7–8 & n.44.

<sup>37</sup> § 209, 90 Stat. at 1434; see Boonstra, *supra* note 20, at 12; Merz et al., *supra* note 28, at 7; *Discriminatory Restrictions on Abortion Funding*, *supra* note 18, at 2. Until 1979, and thus at the time that Congress passed the original Hyde Amendment in 1976, the Department of Health and Human Services was known as the Department of Health, Education, and Welfare. *Harris*, 448 U.S. at 302 n.2.

<sup>38</sup> § 209, 90 Stat. at 1434; Boonstra, *supra* note 20, at 12.

<sup>39</sup> E.g., § 209, 90 Stat. at 1434; see Butler, *supra* note 32, at 935; *Discriminatory Restrictions on Abortion Funding*, *supra* note 18, at 1–2.



lowed.<sup>40</sup> The original text of the 1976 Hyde Amendment provided no exception to abortion funding prohibitions if a pregnancy was the result of rape or incest.<sup>41</sup> In 1977, however, after heated debates as the Senate sought to liberalize the Amendment to include coverage for all “medically necessary” abortions and the House tried to resist any funding whatsoever, the legislature reached a compromise.<sup>42</sup> The federal government would contribute to funding an abortion for women covered by Medicaid only in cases where the woman’s life was threatened, or in cases of incest or rape when “reported promptly to a law enforcement agency or public health service” or where “severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term when so determined by two physicians.”<sup>43</sup> This compromise did not hold; beginning in 1979, Congress eliminated the physical health exception.<sup>44</sup> In 1981, Congress restricted the rape reporting requirement from sixty days to seventy-two hours.<sup>45</sup> By 1982, Congress had also excluded the rape and incest exceptions, leaving the wording to encompass only an exception for circumstances where the woman’s life, not her health, was in danger.<sup>46</sup>

Legislators during this time were bolstered by the 1980 Supreme Court decision in *Harris v. McRae*, which upheld the constitutionality

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<sup>40</sup> See Butler, *supra* note 32, at 935 (stating that the Hyde Amendment, as a rider on appropriations legislation, is “arguably an inappropriate vehicle for substantive policy legislation”); Keighley, *supra* note 21, at 359; *Discriminatory Restrictions on Abortion Funding*, *supra* note 18, at 2.

<sup>41</sup> § 209, 90 Stat. at 1434. “The 1976 Hyde Amendment did not prohibit states from performing non-medically necessary abortions (such as rape or incest abortions) under their Medicaid plans. Rather, it denied federal reimbursement in such cases.” C. Lewis Borders, *Rape and Incest Abortion Funding Under Medicaid—Can the Federal Government Force Unwilling States to Pick Up the Tab?*, 35 U. LOUISVILLE J. FAM. L. 121, 124 (1996).

<sup>42</sup> See Boonstra, *supra* note 20, at 12–13.

<sup>43</sup> Hyde Amendment, Pub. L. No. 95–205, § 101, 91 Stat. 1460, 1460 (1977); see Boonstra, *supra* note 20, at 12–13.

<sup>44</sup> Hyde Amendment, Pub. L. No. 96–123, § 109, 93 Stat. 923, 926 (1979); see Boonstra, *supra*, note 20, at 13.

<sup>45</sup> See Julie F. Kay, Note, *If Men Could Get Pregnant: An Equal Protection Model for Federal Funding of Abortion Under a National Health Care Plan*, 60 BROOK. L. REV. 349, 355 (1994).

<sup>46</sup> Jon C. Dubin, *Developments in the Law of Government Benefit Programs*, 42 LOY. L. REV. 33, 67 (1996); Kay, *supra* note 45, at 355. Mandatory reporting requirements seem reasonable as a safeguard for over-inclusivity in government funding of abortion, though it may be suggestive of the fact that a woman is lying about the circumstances of her pregnancy. See Kay, *supra* note 45, at 355–56. A temporal reporting requirement, especially to one’s in-country employer in the case of Peace Corps Volunteers, may discourage women from seeking an abortion and might increase the traumatic effects of the experience. See *id.* Further, a woman may not realize she is pregnant during the reporting window, especially if she is far from modern amenities or medical care. See *id.*

of the Hyde Amendment's restrictions on Medicaid funding of medically necessary abortions.<sup>47</sup> The Court held that the indigent women affected by the restrictions were not a "suspect class" for purposes of Equal Protection analysis.<sup>48</sup> The Court therefore used rational basis scrutiny, the most lenient level of review with an inherent deference to the government, to determine that the Amendment did not violate the Due Process and Equal Protection clauses of the Constitution.<sup>49</sup> Reasoning that the Amendment's restrictions were rationally related to the legitimate governmental objective of protecting potential life, the Court acknowledged that the Hyde Amendment met this standard by "encouraging childbirth except in the most urgent circumstances . . . ."<sup>50</sup> The *Harris* decision has since been used in annual iterations of the Hyde Amendment to justify the fact that the federal government is under no obligation to fund abortions with public money.<sup>51</sup>

In late 1993, President Clinton signed into law a less restrictive version of the Hyde Amendment that yet again included Medicaid funding for abortions in cases of rape or incest.<sup>52</sup> It still excluded "therapeutic abortions" to preserve the health of the woman, only allowing funding for "medically necessary" abortions to save the life of the woman.<sup>53</sup> Since this expansion in 1993, the annual Hyde Amendment has essentially remained the same; the 2012 Hyde Amendment provides coverage for abortion only in cases of rape, incest, or if a woman's life is endangered by a physical disorder, illness, or injury.<sup>54</sup>

This oscillation between the Hyde Amendment's inclusion and exclusion of exceptions for rape, incest, and life endangerment reflects the highly controversial nature of public funding for abortion.<sup>55</sup> The Hyde Amendment is a forceful piece of legislation with a far-reaching impact on abortion funding standards.<sup>56</sup> Even though the

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<sup>47</sup> § 109, 93 Stat. at 926; *Harris*, 448 U.S. at 326.

<sup>48</sup> *Harris*, 448 U.S. at 323.

<sup>49</sup> *See id.* at 323, 325–26.

<sup>50</sup> *See id.* at 325–26.

<sup>51</sup> *See id.* at 325–27; Keighley, *supra* note 21, at 366.

<sup>52</sup> Pub. L. No. 103–112, § 509, 107 Stat. 1082 (1993); Borders, *supra* note 41, at 125–26.

<sup>53</sup> § 509, 107 Stat. at 1082; Borders, *supra* note 41, at 125–26; Merz et al., *supra* note 28, at 6–7 (drawing a distinction between "therapeutic abortions" as those necessary when a woman's health may be compromised, and "medically necessary abortions," those necessary to save a pregnant woman's life).

<sup>54</sup> Hyde Amendment, Pub. L. No. 112–74, §§ 506–507, 125 Stat. 786, 1111 (2012); *see* Boonstra, *supra* note 20, at 13.

<sup>55</sup> *See* Boonstra, *supra* note 20, at 13; Borders, *supra* note 41, at 121; Merz et al., *supra* note 28, at 8.

<sup>56</sup> *See* Boonstra, *supra* note 20, at 14; Keighley, *supra* note 21, at 359.

Hyde Amendment affects only federal Medicaid contributions to state health plans, and even though states retain some power to expand the abortion services they offer to women beyond what the federal government allows, some states continue to use the Amendment as a guide.<sup>57</sup> Currently, thirty-three states fund abortion only in cases of rape, incest, or life endangerment—the minimum standards required under the Hyde Amendment.<sup>58</sup> Only seventeen states go beyond these federal requirements and fund all or most medically necessary abortions.<sup>59</sup> These numbers indicate that many states have chosen not to expand the limits of the Hyde Amendment, but enable this tenacious legislation to inform policies and funding provisions for programs beyond those affecting indigent women.<sup>60</sup>

Over the past two decades, the Hyde Amendment has acted as a prototype on which similar legislation affecting other governmentally funded entities, such as the military and the Peace Corps, have been modeled.<sup>61</sup> Thus, given the ubiquity of Hyde-influenced legislation, there remains a question as to why Peace Corps abortion funding policies do not, at the very least, remain in line with these current national standards.<sup>62</sup>

### B. *The “No Taxpayer Funding for Abortion Act” and the Threat of Codifying the Hyde Amendment*

The “No Taxpayer Funding for Abortion Act” (H.R. 3), introduced as a bipartisan effort in the House of Representatives in 2011, is a recent effort to prohibit all taxpayer funding of abortion services.<sup>63</sup> If passed, H.R. 3 would create a government-wide prohibition

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<sup>57</sup> See Boonstra, *supra* note 20, at 13; *Discriminatory Restrictions on Abortion Funding*, *supra* note 18, at 3.

<sup>58</sup> GUTTMACHER INST., STATE POLICIES IN BRIEF: STATE FUNDING OF ABORTION UNDER MEDICAID 1–2 (Mar. 1, 2012), *available at* [http://www.guttmacher.org/statecenter/spibs/spib\\_SFAM.pdf](http://www.guttmacher.org/statecenter/spibs/spib_SFAM.pdf).

<sup>59</sup> *Id.*

<sup>60</sup> See *id.*; Boonstra, *supra* note 20, at 14; Keighley, *supra* note 21, at 359.

<sup>61</sup> See Kathryn L. Ponder & Melissa Nothnagle, *Damage Control: Unintended Pregnancy in the United States Military*, 38 J.L. MED. & ETHICS 386, 392 (2010); Keighley, *supra* note 21, at 359.

<sup>62</sup> See Ponder & Nothnagle, *supra* note 61; *Congress Should Lift the Ban*, *supra* note 17, at 1–2.

<sup>63</sup> See No Taxpayer Funding for Abortion Act, H.R. 3, 112th Cong. § 308 (2011); Memorandum from Lamar Smith, Chairman, Comm. on the Judiciary, to Members of the Comm. on the Judiciary (Feb. 28, 2011), *available at* <http://judiciary.house.gov/news/Statement03032011.html> [hereinafter Lamar Smith Memorandum].

on public funding of abortions.<sup>64</sup> As a comprehensive ban on funding, H.R. 3 would override all of the separate abortion funding policies in existence throughout various government agencies.<sup>65</sup> H.R. 3 would counteract vacillation in funding policies that occurs due to the fact that most existing policies are attached as “riders” to annual appropriations bill.<sup>66</sup> These bills must be re-approved every year and are often influenced by political trends.<sup>67</sup>

In an effort to make permanent policies previously passed on a year-to-year basis, H.R. 3 seeks to codify both the Hyde Amendment and the Helms Amendment—a 1973 law restricting the United States’ foreign assistance funds.<sup>68</sup> H.R. 3 also aims to expand and write into permanent law conscience clauses that give immunity to health care institutions and professionals who refuse to perform or pay for abortions, or provide information to women seeking an abortion.<sup>69</sup> Additionally, H.R. 3 would expand the scope of the original Hyde Amendment, which applied only to federal agencies funded through appropriations to the Departments of Education, Labor, and Health and Human Services.<sup>70</sup> The provisions of H.R. 3 would cover a broader spectrum of agencies and groups of women dependent on the federal government for their health care, including women in federal prison and Peace Corps Volunteers.<sup>71</sup>

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<sup>64</sup> H.R. 3; Lamar Smith Memorandum, *supra* note 63.

<sup>65</sup> See H.R. 3; Lamar Smith Memorandum, *supra* note 63. This patchwork of funding schemes is exhibited in the disparity between the rights of women receiving health care under Medicaid and women serving in the Peace Corps in terms of abortion funding exceptions for cases of rape, incest, and health of the female. See Boonstra, *supra* note 20, at 14–15; Lamar Smith Memorandum, *supra* note 63.

<sup>66</sup> H.R. 3; see Butler, *supra* note 32, at 935; Lamar Smith Memorandum, *supra* note 63.

<sup>67</sup> H.R. 3; see Butler, *supra* note 32, at 935; Keighley, *supra* note 21, at 360–61; *Discriminatory Restrictions on Abortion Funding*, *supra* note 18, at 1.

<sup>68</sup> The Foreign Assistance Act of 1961, 22 U.S.C. § 2151b(f)(1) (2006) (stating that no foreign assistance funds “may be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions”); Hyde Amendment, Pub. L. No. 112–74, §§ 506–507, 125 Stat. 786, 1111 (2011); H.R. 3; see Allegra A. Jones, Note, *The “Mexico City Policy” and Its Effect on HIV/AIDS Services in Sub-Saharan Africa*, 24 B.C. THIRD WORLD L.J. 187, 188–91, 194 (2004) (observing that international family planning efforts have been controversial in the U.S. because these efforts “often include[] abortion counseling, referrals, and related medical care,” and that because of conditions placed on federal funding, family planning organizations “must decide whether to cease their abortion-related services, or limit their potential services due to constrained budgets”); Lamar Smith Memorandum, *supra* note 63.

<sup>69</sup> See H.R. 3 § 310; Lamar Smith Memorandum, *supra* note 63.

<sup>70</sup> See Hyde Amendment, Pub. L. No. 94–439, § 209, 90 Stat. 1418, 1434 (1976); H.R. 3.

<sup>71</sup> H.R. 3; see Letter, *Vote “NO” on H.R. 3, the “No Taxpayer Funding For Abortion Act,”* from Laura W. Murphy, Dir., Washington Legislative Office, and Vania Leveille, Senior Legisla-

The de facto codification of the Hyde Amendment attendant to the passage of H.R. 3 would have paradoxical effects for female Peace Corps Volunteers.<sup>72</sup> Despite ardent pro-life language, H.R. 3's exceptions to funding prohibitions in cases of rape, incest, or life endangerment would newly extend to the Peace Corps.<sup>73</sup> Allowing Peace Corps Volunteers the right to a federally funded abortion when they are the victims of rape or when their lives are in danger would bring Peace Corps policy in line with existing policies under other federal health care schemes.<sup>74</sup> This small, if not incidental, change in Peace Corps reproductive health policy, however, would be a treacherous step back for other American women seeking elective abortion procedures or abortions when their health is compromised.<sup>75</sup> If H.R. 3 is signed into law, it would have broad reaching and lasting consequences on women's public health and resource access, sufficient to counteract the step forward for the Peace Corps.<sup>76</sup> Thus, female Volunteers need a new means of achieving abortion funding that is concerted directed at the Peace Corps, not incidental and cloaked in permanent funding restrictions.<sup>77</sup>

## II. ABORTION FUNDING RESTRICTIONS IN CONTEXT: INCONSISTENCIES, PEACE CORPS POLICY SHIFTS, AND EFFORTS FOR CHANGE

The fact that Peace Corps funding restrictions for abortion do not allow an exception for rape, incest, or life endangerment puts the Peace Corps at odds with other federally funded health care

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tive Counsel, Am. Civil Liberties Union, to Representative 1 (May 3, 2011), *available at* [http://www.aclu.org/files/assets/H\\_R\\_3\\_ACLU\\_Letter\\_Opposing\\_No\\_Taxpayer\\_Funding\\_for\\_Abortion\\_Act\\_5-3-11\\_FINALFINAL.pdf](http://www.aclu.org/files/assets/H_R_3_ACLU_Letter_Opposing_No_Taxpayer_Funding_for_Abortion_Act_5-3-11_FINALFINAL.pdf) [hereinafter *Vote "NO" on H.R. 3 Letter*]; Lamar Smith Memorandum, *supra* note 63.

<sup>72</sup> §§ 506–507, 125 Stat. at 1111; H.R. 3; *see Vote "NO" on H.R. 3 Letter*, *supra* note 71, at 1; Letter from Cory L. Richards, Exec. Vice President and Vice President for Public Policy, The Guttmacher Institute, to the Honorable Jerrold Nadler, Ranking Member Judiciary Subcommittee on the Constitution, U.S. House of Representatives 1 (Feb. 10, 2011), *available at* <http://www.guttmacher.org/pubs/Guttmacher-HR3-Testimony.pdf> [hereinafter *Guttmacher H.R. 3 Letter*].

<sup>73</sup> *See* §§ 506–507, 125 Stat. at 1111; H.R. 3; *Vote "NO" on H.R. 3 Letter*, *supra* note 71, at 1; *Guttmacher H.R. 3 Letter*, *supra* note 72, at 1.

<sup>74</sup> *Congress Should Lift the Ban*, *supra* note 17, at 2.

<sup>75</sup> *See Vote "NO" on H.R. 3 Letter*, *supra* note 71, at 1; *Guttmacher H.R. 3 Letter*, *supra* note 72, at 1. A discussion of public funding for elective abortions, however, is beyond the scope of this Note.

<sup>76</sup> *See Vote "NO" on H.R. 3 Letter*, *supra* note 71, at 1; *Guttmacher H.R. 3 Letter*, *supra* note 72, at 1; *Congress Should Lift the Ban*, *supra* note 17, at 1.

<sup>77</sup> *See Guttmacher H.R. 3 Letter*, *supra* note 72; *Congress Should Lift the Ban*, *supra* note 17, at 1–2.

schemes.<sup>78</sup> Furthermore, this lack of an emergency abortion provision creates an internal inconsistency within Peace Corps policy, in light of recent Volunteer health and safety reforms.<sup>79</sup> This internal tension calls into question the underlying rationale behind the continued denial of a full range of reproductive health care for Volunteers.<sup>80</sup> This policy incongruence demands a deeper look into the political influences that taint what is, in many domestic scenarios, an uncontroversial protection for female federal employees.<sup>81</sup> Recent attempts in the legislature suggest a momentum towards overturning restrictions on Peace Corps funding of abortion in exigent circumstances.<sup>82</sup> The future impact of these efforts, which have yet to succeed, remains uncertain because of ever-changing political ideologies.<sup>83</sup>

#### A. Abortion Coverage for Peace Corps Volunteers as Compared with Other Federal Funding Schemes: The Cases of Federal Prisons and the Military

Supreme Court decisions guaranteeing the ability to control one's own reproductive choices are the law of the land and apply to all American women.<sup>84</sup> American women who make choices in their lives to engage in certain federal employment such as the Peace Corps, however, are subject to intervening policies that obscure these

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<sup>78</sup> *Congress Should Lift the Ban*, *supra* note 17, at 2.

<sup>79</sup> Compare OFFICE OF MEDICAL SERVS., PEACE CORPS, MS 263 VOLUNTEER PREGNANCY 5 (2012), available at [http://files.peacecorps.gov/manuals/manual/200\\_Volunteers/260-269\\_Trainee\\_and\\_Volunteer\\_Medical\\_Support/MS\\_263/Volunteer\\_Pregnancy.pdf](http://files.peacecorps.gov/manuals/manual/200_Volunteers/260-269_Trainee_and_Volunteer_Medical_Support/MS_263/Volunteer_Pregnancy.pdf) [hereinafter PEACE CORPS VOLUNTEER PREGNANCY] (preventing the Peace Corps from paying for abortions costs), with *Peace Corps Fact Sheet: Sexual Assault Prevention and Response*, PEACE CORPS (May 2011), <http://multimedia.peacecorps.gov/multimedia/pdf/documents/Peace%20Corps%20Fact%20Sheet%20on%20Sexual%20Assault%20Prevention%20and%20Response.pdf> [hereinafter *Sexual Assault Fact Sheet*] (discussing improved medical and mental health response to sexual assault without addressing the potential for abortion in cases of sexual assault or life endangerment).

<sup>80</sup> See *Congress Should Lift the Ban*, *supra* note 17, at 2; *Sexual Assault Fact Sheet*, *supra* note 79.

<sup>81</sup> See Boonstra, *supra* note 20, 12–15; *Congress Should Lift the Ban*, *supra* note 17, at 1–2; Lipton-Lubet *America's Angels*, *supra* note 24.

<sup>82</sup> See Lautenberg Provisions Included, *supra* note 15; Planned Parenthood Commends Senate Appropriations Committee, *supra* note 25.

<sup>83</sup> See *Congress Should Lift the Ban*, *supra* note 17, at 1–2; *Discriminatory Restrictions on Abortion Funding*, *supra* note 18, at 1.

<sup>84</sup> See Butler, *supra* note 32, at 932; see, e.g., *Planned Parenthood v. Casey*, 505 U.S. 833, 877 (1992) (stating that “[a] finding of an undue burden is a shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus”); *Roe v. Wade*, 410 U.S. 113, 163–65 (1973) (protecting a woman’s constitutional right to an abortion during the first trimester of pregnancy).

reproductive health protections.<sup>85</sup> There is value in comparing Peace Corps policy to other federal health care schemes, such as those in place in federal prisons and in the military.<sup>86</sup> Comparisons to women serving in the Peace Corps draw attention to the inequity that results when the legislature applies funding policies non-uniformly.<sup>87</sup> Though acknowledging that the health care schemes for federal inmates, military personnel, and Peace Corps Volunteers reflect the unique demands and particular needs of these systems, comparisons beg questions about why the government recognizes a women's dire need for funding to terminate her pregnancy in one circumstance but not another.<sup>88</sup>

Unlike Peace Corps Volunteers, female federal inmates who are the victims of sexual assault or whose lives are in danger as a result of a pregnancy, have access to fully funded abortion procedures through the Federal Bureau of Prisons.<sup>89</sup> Supreme Court decisions have recognized that the right to adequate medical care is one of the most basic necessities constitutionally guaranteed to incarcerated individuals who cannot otherwise provide care for themselves.<sup>90</sup> Current Federal Bureau of Prisons policy that funds abortions in cases of rape, incest, and life endangerment thus implies that denying a female in-

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<sup>85</sup> See Boonstra, *supra* note 20, at 14–15; Ponder & Nothnagle, *supra* note 61, at 390 (stating that “[a]lthough the Supreme Court has upheld women’s constitutional right to an abortion before viability, the government is not legally required to guarantee access to abortion. Instead, laws restricting or regulating abortion have been subject to an ‘undue burden’ standard” and thus, the government can set out intervening policies as long as they do not pose an undue burden on a woman’s right to an abortion). Women serving in the military overseas and women incarcerated in federal prisons are also subject to intervening laws and circumstances that affect abortion rights and access to abortion funding. See Ponder & Nothnagle, *supra* note 61, at 390.

<sup>86</sup> See Leah Ginsberg, *Do Prisoners Get a Better Deal? Comparing the Abortion Rights and Access of Military Women Stationed Abroad to Those of Women in Prison*, 11 CARDOZO WOMEN’S L.J. 385, 387–88, 399 (2005) (critiquing the fact that federal prisoners enjoy broader rights surrounding abortion—including funding, use of state facilities, and counseling services—as compared to those available to women serving their country in the military). Using the military and the federal prison system as two points of comparison with the Peace Corps does not intend to express a view that federal inmates do not deserve the health care they receive. See *id.*; *Discriminatory Restrictions on Abortion Funding*, *supra* note 18, at 4–6. This comparison aims at drawing attention to inconsistencies in policies that affect women, as citizens and as humans similarly receiving health care from the federal government. See Ginsberg, *supra*, at 387–88, 399; *Discriminatory Restrictions on Abortion Funding*, *supra* note 18, at 4–6.

<sup>87</sup> See *Discriminatory Restrictions on Abortion Funding*, *supra* note 18, at 2–6.

<sup>88</sup> See *id.*

<sup>89</sup> See *id.* at 6.

<sup>90</sup> See Ginsberg, *supra* note 86, at 396; see, e.g., *Estelle v. Gamble*, 429 U.S. 97, 103 (1976).

mate a funded abortion in these instances would be a constitutional violation as a denial of basic and necessary medical care.<sup>91</sup>

Despite the Federal Bureau of Prisons' ban on funding "elective" abortions, the Bureau arranges for the inmate's abortion and uses public funds for the transport of inmates to get an abortion procedure, even if the inmate is paying for the procedure out of her own pocket.<sup>92</sup> Further, a Bureau of Prisons' Program Statement cites "provid[ing] each pregnant inmate with medical, religious, and social counseling to aid her in making the decision whether to carry the pregnancy to full term" as one of its stated objectives.<sup>93</sup>

Women serving in the U.S. armed forces, dependent on federal government health care under the TRICARE system, only recently gained access to abortion funding equal to that of federal inmates.<sup>94</sup> Not until January 2, 2013, with the passage of the National Defense Authorization Act for the Fiscal Year 2013, did Congress permit Department of Defense funds to cover abortion for servicewomen whose pregnancy resulted from rape.<sup>95</sup> The convoluted history of funding restrictions on abortion-related care for military personnel and their dependents underscores the politicized nature of Department of Defense health care funding.<sup>96</sup>

For the three decades between 1981 and 2013, the Department of Defense allowed servicewomen insurance coverage for abortion procedures only if the pregnancy endangered the soldier's life.<sup>97</sup> Access to funded abortion services had not always been so restrictive, however.<sup>98</sup> In 1966, military hospitals were not governed by the same rules covering civilian hospitals, and thus made abortion services

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<sup>91</sup> See Ginsberg, *supra*, note 86, at 397–98.

<sup>92</sup> See *id.* at 401.

<sup>93</sup> See *id.* at 399–400.

<sup>94</sup> National Defense Authorization Act for the Fiscal Year 2013, Pub. L. No. 112–239, § 704, 2012 U.S.C.C.A.N. (126 Stat.) 1632, 1639 (to be codified at 10 U.S.C. § 1093(a)) (stating, as amended, "[f]unds available to the Department of Defense may not be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term or in a case in which the pregnancy is the result of an act of rape or incest"); see Hansen, *supra* note 23, at 131; *Lift the Ban on Federally Funded Abortion Services for Military Sexual-Assault Victims*, NARAL PRO-CHOICE AM. FOUND. 1 (Jan. 1, 2011), <http://www.prochoiceamerica.org/media/fact-sheets/abortion-ban-military-sexual-assault.pdf> [hereinafter *Military Sexual-Assault Survivors*].

<sup>95</sup> § 704, 2012 U.S.C.C.A.N. (126 Stat.) 1632, 1639; see DAVID F. BURRELLI, CONG. RESEARCH SERV., 95–387, ABORTION SERVICES AND MILITARY MEDICAL FACILITIES, 1, 19 (2013).

<sup>96</sup> See BURRELLI, *supra* note 95, at 1, 19.

<sup>97</sup> See *id.* (providing a chronology of military abortion funding policy and Congressional action between the 1960s and 2013).

<sup>98</sup> See *id.* at 129.



available to all servicewomen.<sup>99</sup> In 1970, the Department of Defense set forth an official policy requiring all military hospitals to provide abortions to servicewomen and their dependents, as long as two physicians approved the procedure.<sup>100</sup> The following year, President Nixon overturned this policy, mandating that military hospitals, once again abide by the laws of the state in which the facility was located.<sup>101</sup> Overseas, military facilities were still able to follow local law, which allowed many women stationed abroad to access abortion services.<sup>102</sup>

Throughout the 1970s the debate over taxpayer funding of abortion proliferated, coming to a conclusion with the Supreme Court's 1980 decision in *Harris v. McRae*.<sup>103</sup> In *Harris*, the Court established that neither Congress nor the states had a duty to pay for welfare recipients' abortions, except in cases of rape, incest, or life endangerment.<sup>104</sup> In the decades since 1979, the annual Department of Defense appropriations bill has upheld abortion funding restrictions that prohibit funding abortion for military personnel, retirees, and their dependents through TRICARE.<sup>105</sup> Until January of 2013, Department of Defense funds could not be used if a servicewoman was sexually assaulted.<sup>106</sup> Unless she could prove she was in danger of dying as a result of an unwanted pregnancy, a female soldier, or the female dependent of a service member, had to use her own money to pay for her required medical care.<sup>107</sup>

The health and safety of troops is without question a top priority for the military—it is essential to ensure unit cohesion, readiness, and success.<sup>108</sup> For three decades, however, the Department of Defense, pursuant to Congress's orders, isolated female troops' health from the issue of sexual assault, casting doubt on the efficacy of TRICARE to

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<sup>99</sup> *Id.*

<sup>100</sup> See Ponder & Nothnagle, *supra* note 61, at 389–90.

<sup>101</sup> See *id.* at 390. In 1971, “thirty states and the District of Columbia prohibited abortion except when the [woman’s] life was in danger.” Hansen, *supra* note 23, at 129.

<sup>102</sup> See Ponder & Nothnagle, *supra* note 61, at 390 (noting that women serving in Vietnam were granted access to abortion under local law, and were thus able to remain in the armed forces if they experienced an unintended pregnancy).

<sup>103</sup> See *Harris v. McRae*, 448 U.S. 297, 326 (1980); Hansen, *supra* note 23, at 130.

<sup>104</sup> See *Harris*, 448 U.S. at 326.

<sup>105</sup> See Boonstra, *supra* note 20, at 12–14; Amy E. Crawford, *Under Siege: Freedom of Choice and the Statutory Ban on Abortions on Military Bases*, 71 U. CHI. L. REV. 1549, 1553 (2004).

<sup>106</sup> See Hansen, *supra* note 23, at 131. Department of Defense policy also prohibits the use of its facilities for abortions except to save the life of the woman, or in cases of rape or incest, and not for elective abortion procedures. See *id.*

<sup>107</sup> See *id.* at 130.

<sup>108</sup> See *id.* at 135.

fully meet servicewomen's needs.<sup>109</sup> Rates of sexual assault in the military are alarming, underscoring the need for this recent change.<sup>110</sup> Pentagon statistics reveal more than three thousand incidents of sexual assault upon servicewomen in fiscal year 2009—an eleven percent increase from the previous year.<sup>111</sup> The Pentagon likewise estimates that victims report only between ten and twenty percent of all assaults, many of which occur at the hands of fellow service members.<sup>112</sup> Female service members face daunting barriers to reporting a sexual assault to superior officers or to medical personnel, namely stigma and loss of confidentiality or ridicule by the chain of command.<sup>113</sup> The U.S. Army policy on sexual assault states: “The Army will treat all victims of sexual assault with dignity, fairness, and respect.”<sup>114</sup> Recognizing the need for change, Congress lifted the ban on Department of Defense abortion funding in cases of rape.<sup>115</sup> The change marks a step for the military towards fulfilling its stated policy and serves as a template for Congress to make an analogous change in Peace Corps funding policy.<sup>116</sup> Until this change is made, comparing Peace Corp policy to other federally funded health care schemes will lead to perplexing results.<sup>117</sup> When Congress authorizes federal spending to pro-

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<sup>109</sup> See *id.* Pre-2103 Department of Defense restrictions called into doubt whether the military was actually being responsive to servicewomen's health needs: “[w]hile the military's bountiful lifetime health insurance program, [TRICARE], appears to reflect the government's acknowledgement of this priority [(adequate health care for military personnel), many of the shortcomings of [TRICARE's] coverage are exposed when applied to women's health care needs.” *Id.* As is the case with current Peace Corps policy, which provides significant health care services to Volunteers, abortion remains one of the “most blatant gaps” in these federal care structures. See Peace Corps Act, 22 U.S.C. § 2504(e) (2006); Hansen, *supra* note 23, at 135.

<sup>110</sup> *Military Sexual-Assault Survivors*, *supra* note 94, at 1–2.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> See Hansen, *supra* note 23, at 135–36.

<sup>114</sup> DEP'T OF THE ARMY, ARMY COMMAND POLICY 66 (June 7, 2006), available at <http://www.fas.org/irp/doddir/army/ar600-20.pdf> [hereinafter ARMY COMMAND POLICY].

<sup>115</sup> National Defense Authorization Act for the Fiscal Year 2013, Pub. L. No. 112–239, § 704, 2012 U.S.C.C.A.N. (126 Stat.) 1632, 1639 (to be codified at 10 U.S.C. § 1093(a)); see BURRELLI, *supra* note 95, at 1, 19. Notwithstanding this coverage change, TRICARE does not provide abortion counseling, referral, or follow-up services incident to a self-funded abortion. See Hansen, *supra* note 23, at 135.

<sup>116</sup> § 704, 2012 U.S.C.C.A.N. (126 Stat.) 1632, 1639; see ARMY COMMAND POLICY, *supra* note 114, at 66; Hansen, *supra* note 23, at 135; *Military Sexual-Assault Survivors*, *supra* note 94, at 2; see also Boonstra, *supra* note 20, at 14–15; *Discriminatory Restrictions on Abortion Funding*, *supra* note 18, at 5–6.

<sup>117</sup> See Boonstra, *supra* note 20, at 14–15; *Discriminatory Restrictions on Abortion Funding*, *supra* note 18, at 5–6.

vide health care to some, but not all, American women, this disparity demands further legislative responsiveness.<sup>118</sup>

*B. Recent Peace Corps Policy Changes for Increased Volunteer Safety,  
but a Continued Ban on Abortion Funding*

In response to mounting public concern, the Peace Corps has recently implemented a number of policy reforms centered on Volunteer safety and security, and combating physical and sexual assault.<sup>119</sup> These reforms indicate the ability of the Peace Corps to respond to extra-agency influence and to modify Volunteer support policies over time.<sup>120</sup> The 2009 murder of Volunteer Kate Puzey while serving in the African country of Benin spurred concerned stakeholders to lobby the Peace Corps for comprehensive review of Volunteer care.<sup>121</sup> After Kate Puzey's death, Senator Johnny Isakson introduced the Kate Puzey Volunteer Protection Act in the Senate.<sup>122</sup> Representatives introduced similar legislation in the House, which passed with unanimous support.<sup>123</sup> On November 21, 2011, President Obama signed the Kate Puzey Peace Corps Volunteer Protection Act into law, thereby "codif[ying] and expand[ing] many of the reforms the agency has put in place to enhance safety and security and ensure compassionate and effective response and support to all volunteers."<sup>124</sup> Amending the original 1961 Peace Corps Act, which created the agency, the 2011 Act mandates the development of a Sexual Assault Advisory Council and implementation of comprehensive sexual assault risk-reduction and response training specific to individual host countries.<sup>125</sup> These legislative efforts seem to be a direct response to

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<sup>118</sup> See Boonstra, *supra* note 20, at 14–15; *Discriminatory Restrictions on Abortion Funding*, *supra* note 18, at 5–6; see also *supra* notes 15–17.

<sup>119</sup> See Schecter, *supra* note 1; see, e.g., Kate Puzey Peace Corps Volunteer Protection Act of 2011, Pub. L. No. 112–57, 125 Stat. 736, 736–46 (codified at 22 U.S.C. § 2507a).

<sup>120</sup> See 125 Stat. at 736–46; see Randy Kreider, *It's Unanimous: Congress Passes Law to Protect Peace Corps Volunteers*, ABC NEWS: THE BLOTTER (Nov. 1, 2011), <http://abcnews.go.com/Blotter/congress-passes-law-protect-peace-corps-volunteers/story?id=14576127#.TzUw-NVm3>; *Sexual Assault Fact Sheet*, *supra* note 79, at 1.

<sup>121</sup> See *Kate Puzey Peace Corps Volunteer Protection Act*, NAT'L PEACE CORPS ASSN., <http://www.peacecorpsconnect.org/kate-puzey-peace-corps-volunteer-protection-act/> (last visited May 16, 2013); Kreider, *supra* note 120.

<sup>122</sup> *Kate Puzey Peace Corps Volunteer Protection Act*, *supra* note 121.

<sup>123</sup> *Id.*

<sup>124</sup> Press Release, U.S. Peace Corps, Peace Corps Director Welcomes Signing of Kate Puzey Peace Corps Volunteer Protection Act (Nov. 21, 2011), available at [http://www.peacecorps.gov/index.cfm?shell=resources.media.press.view&news\\_id=1918](http://www.peacecorps.gov/index.cfm?shell=resources.media.press.view&news_id=1918).

<sup>125</sup> 125 Stat. at 736–46; *Kate Puzey Peace Corps Volunteer Protection Act*, *supra* note 121.

critiques that the agency espouses a “‘blame-the-victim’ culture within the Peace Corps when Volunteers are assaulted or attempt to report problems.”<sup>126</sup> The Peace Corps has now committed to follow guidelines that “emphasize a victim-centered approach and the specific procedures [host countries] must follow to respond promptly to an incident and provide excellent support to a victim.”<sup>127</sup>

Despite these improvements, there remains a void in volunteer protection.<sup>128</sup> Due to current legislation that prohibits the Peace Corps from funding abortions in the case of rape, Volunteers lack access to the full range of resources to deal with what is often the result of sexual assault—pregnancy.<sup>129</sup> The Peace Corps Office of Medical Services policy indicates that the agency will pay for the Volunteer to travel home to the United States to obtain an abortion and will pay for medical expenses incurred due to complications with the procedure, but will under no circumstances pay for the actual procedure.<sup>130</sup>

There is a disconnect between Peace Corps sexual assault safety, mental health, and reporting policies currently in force, and the agency’s treatment of the immediate physical consequences of rape.<sup>131</sup> This disconnect indicates that policy makers stopped short of a comprehensive plan to ensure the utmost protection for Volunteers serving in the field.<sup>132</sup> Although the newly invigorated safety and response policies may decrease instances of sexual assault against Volunteers, this unmet need for abortion funding remains, leaving some Volunteers without recourse and unable to meet the goals of Peace Corps service.<sup>133</sup>

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<sup>126</sup> See Kreider, *supra* note 120.

<sup>127</sup> *Sexual Assault Fact Sheet*, *supra* note 79.

<sup>128</sup> See *Congress Should Lift the Ban*, *supra* note 17, at 1–2; *Sexual Assault Fact Sheet*, *supra* note 79.

<sup>129</sup> See Department of State, Foreign Operations, and Related Programs Appropriations Act of 2012, Pub. L. No. 112–74, 125 Stat. 787, 1181–82 (2011); Schechter, *supra* note 1.

<sup>130</sup> PEACE CORPS VOLUNTEER PREGNANCY, *supra* note 79, at 5. “When a V/T [Volunteer/Trainee] elects to have an abortion, the medical expenses directly related to the abortion procedure will be the responsibility of the V/T. As a matter of law, the Peace Corps may not pay these costs.” *Id.*

<sup>131</sup> See *Congress Should Lift the Ban*, *supra* note 17, at 1; *Sexual Assault Fact Sheet*, *supra* note 79, at 1.

<sup>132</sup> See *Congress Should Lift the Ban*, *supra* note 17, at 1; *Sexual Assault Fact Sheet*, *supra* note 79, at 1.

<sup>133</sup> See *Congress Should Lift the Ban*, *supra* note 17, at 1; Lipton-Lubet *America’s Angels*, *supra* note 24; *Sexual Assault Fact Sheet*, *supra* note 79, at 1.

*C. Demanding Change: Recent Legislative Attempts to Fight  
Peace Corps Funding Restrictions*

*Women who serve in the Peace Corps have found themselves at an increased risk of sexual assault, yet their own country has restricted their access to care. Peace Corps volunteers selflessly devote themselves to helping underserved populations throughout the world—they should not have to forfeit their rights or jeopardize their health to do so.*

—Senator Frank Lautenberg<sup>134</sup>

Answering the call to keep the Peace Corps on the legislative agenda and maintain the momentum of Peace Corps health and safety reforms, two senators proposed amendments to the fiscal year 2012 Foreign Operations Appropriations Bill to end the current total ban on abortion.<sup>135</sup> New Jersey Senator Frank Lautenberg and Vermont Senator Patrick Leahy introduced the amendments.<sup>136</sup> The proposals would remove tenacious language in annual spending legislation that has prohibited any use of Peace Corps funds for abortion procedures since 1979, and replace it with language allowing the Peace Corps to fund safe abortion services in cases of sexual assault, incest, and life endangerment.<sup>137</sup> The Senate Appropriations Subcommittee on State, Foreign Affairs, and Related Programs approved the changes and included them in the fiscal year 2012 appropriations bill.<sup>138</sup>

Although these amendments were not incorporated into President Obama's omnibus spending package for the fiscal year 2012, they stand as examples of an important first step and may mark an emerging trend in challenges to abortion restrictions.<sup>139</sup> Likewise, the proposals provide a template, far removed from the longtime influence of the Hyde Amendment and H.R. 3, for a permanent emergency exception that has the potential to exist not in bill riders, but

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<sup>134</sup> Lautenberg Provisions Included, *supra* note 15.

<sup>135</sup> S. 1601, 112th Cong. (1st Sess. 2011); see Lautenberg Provisions Included, *supra* note 15; Jodi Jacobson, *Senate Committee Votes to Lift Ban on Abortion for Peace Corps Volunteers in Cases of Rape, Life Endangerment*, RH REALITY CHECK (Sept. 22, 2011, 7:25 PM), <http://www.rhrealitycheck.org/blog/2011/09/22/senate-committee-votes-lift-abortions-peace-corps-volunteers-cases-rape-life-endangerment-0>.

<sup>136</sup> Lautenberg Provisions Included, *supra* note 15; Jacobson, *supra* note 135.

<sup>137</sup> See Lautenberg Provisions Included, *supra* note 15; Jacobson, *supra* note 135.

<sup>138</sup> See Lautenberg Provisions Included, *supra* note 15; Jacobson, *supra* note 135.

<sup>139</sup> See Department of State, Foreign Operations, and Related Programs Appropriations Act of 2012, Pub. L. No. 112-74, 125 Stat. 787, 1181-82 (2011) (failing to incorporate the Leahy or Lautenberg proposals); Planned Parenthood Commends Senate Appropriations Committee, *supra* note 25; Lipton-Lubet *America's Angels*, *supra* note 24.

codified legislation.<sup>140</sup> These amendments set a legislative tone that funding for emergency abortions constitutes essential reproductive medical care and likewise mark a shift in the dialogue in which funding for “elective” abortions is divorced from funding for abortion in dire circumstances.<sup>141</sup> This distinction is critical in achieving incremental legislative change in abortion funding policy and attaining reproductive health care rights for female Peace Corps Volunteers equal to those of their counterparts at home.<sup>142</sup>

### III. A LONG WAY FROM HOME: QUESTIONING AND CHALLENGING PEACE CORPS FUNDING RESTRICTIONS

For the past thirty years, the Supreme Court’s reasoning in *Harris v. McRae*, upholding the validity of the Hyde Amendment, has survived as an unwavering answer to the many questions surrounding public funding for abortion.<sup>143</sup> This reasoning has been used to justify the constitutionality of federal funding restrictions for abortion, leading scholars to posit that:

[p]ublic funding of abortion has historically rested beyond the reach of the pro-choice legal framework. Laws prohibiting public funding for abortion have been upheld since these laws supposedly do not pose undue burden on . . . women’s right to choose. The rational interest of legislators in privileging childbirth over abortion supposedly legitimates these funding restrictions because they are not imposing any affirmative obstacles . . . .<sup>144</sup>

Such analyses of the *Harris* framework illuminate the difficulty for aggrieved parties, namely indigent women denied abortion care, to successfully challenge federal funding restrictions now or in the future.<sup>145</sup> Likewise, such analyses foreshadow the difficulty that other

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<sup>140</sup> See Butler, *supra* note 32, at 935; Vote “NO” on H.R. 3 Letter, *supra* note 71; Lipton-Lubet *America’s Angels*, *supra* note 24.

<sup>141</sup> See Lautenberg Provisions Included, *supra* note 15; *Congress Should Lift the Ban*, *supra* note 17, at 2; Jacobson, *supra* note 135.

<sup>142</sup> See *Congress Should Lift the Ban*, *supra* note 17, at 1–2; Jacobson, *supra* note 135.

<sup>143</sup> Hyde Amendment, Pub. L. No. 96–123, § 109, 93 Stat. 923, 926 (1979); see *Harris v. McRae*, 448 U.S. 297, 326 (1980); Susan Frelich Appleton, *Standards for Constitutional Review of Privacy-Invasive Welfare Reforms: Distinguishing the Abortion-Funding Cases and Redeeming the Undue-Burden Test*, 49 VAND. L. REV. 1, 18–19 (1996); Keighley, *supra* note 21, at 359.

<sup>144</sup> Keighley, *supra* note 21, at 400–01.

<sup>145</sup> See *Harris*, 448 U.S. at 316–18; Kay, *supra* note 45, at 404 (stating that providing women with a full range of reproductive health services and choices is “central to gender

groups, such as female Peace Corps Volunteers, might face should they mount a challenge to federally funded Peace Corps policies.<sup>146</sup> A closer analysis of abortion funding, as essential to Volunteer medical treatment in cases of rape and life endangerment, provides a new lens through which to view the government's compelling interest in protecting fetal life.<sup>147</sup> This approach questions how the government's compelling interests can remain so rigid in the face of dire circumstances affecting the health of women in the Peace Corps.<sup>148</sup>

A. *The Legacy of Harris v. McRae and the Difficulty of Using the Undue Burden Framework to Challenge Funding Restrictions*

The Supreme Court has upheld a woman's constitutional right to an abortion before a fetus reaches viability.<sup>149</sup> The government, however, is under no legal obligation to guarantee access to abortion.<sup>150</sup> Instead, the government is subject to the "undue burden" framework set forth in *Planned Parenthood v. Casey*.<sup>151</sup> Under this standard, regulations surrounding abortion are considered valid unless they have "the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus."<sup>152</sup> Twelve years prior to *Casey*, the Court had begun to set out a structure for assessing the dichotomy between the government's imposition of affirmative obstacles to abortion access and government non-action.<sup>153</sup> The Court's decision in *Harris* stood for the proposition that neither Congress nor any individual state had an affirmative duty to pay for abor-

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equality for all women," and that courts in the future should employ a modified equal protection standard and "examine legislation that classifies by gender to determine its practical impact, not the legislators' intentions in passing the law"); Keighley, *supra* note 21, at 400-01; *see also* Beal v. Doe, 432 U.S. 438, 447 (1977) (holding that the Federal Medicaid Act did not require participating states to fund nontherapeutic—those not necessary to save the life of the mother—first trimester abortions); Maher v. Roe, 432 U.S. 464, 480 (1977) (upholding the constitutionality of a state law that denied the use of Medicaid funds for nontherapeutic first trimester abortions).

<sup>146</sup> *See Harris*, 448 U.S. at 316-18; Appleton, *supra*, note 143, at 18-19; Boonstra, *supra* note 20, at 14-15; *Congress Should Lift the Ban*, *supra* note 17, at 2.

<sup>147</sup> *See Planned Parenthood v. Casey*, 505 U.S. 833, 876 (1992); *Congress Should Lift the Ban*, *supra* note 17, at 2.

<sup>148</sup> *See Casey*, 505 U.S. at 876; *Congress Should Lift the Ban*, *supra* note 17, at 2.

<sup>149</sup> *Roe v. Wade*, 410 U.S. 113, 163 (1973).

<sup>150</sup> *Harris*, 448 U.S. at 326-27; *see* Crawford, *supra* note 105, at 1550.

<sup>151</sup> *See Casey*, 505 U.S. at 874 ("Only where state regulation imposes an undue burden on a woman's ability to make this decision does the power of the State reach into the heart of the liberty protected by the Due Process Clause.").

<sup>152</sup> *Id.* at 877.

<sup>153</sup> *See Harris*, 448 U.S. at 315-317.

tions for women on welfare, except when the mother's life was endangered.<sup>154</sup> In determining that the Hyde Amendment did not violate impoverished women's rights, the Court reasoned:

[A]lthough government may not place obstacles in the path of a woman's exercise of her freedom of choice, it need not remove those not of its own creation . . . The financial constraints that restrict an indigent woman's ability to enjoy the full range of constitutionally protected freedom of choice are the product not of governmental restrictions on access to abortions, but rather of her indigency.<sup>155</sup>

When viewed in the context of Peace Corps service and the right to a funded abortion, this framework could block potential avenues of challenging Peace Corps policy.<sup>156</sup> Service as a Peace Corps Volunteer is just that—voluntary.<sup>157</sup> It is an un-coerced choice by an individual, and arguably, the conditions of employment are therefore self-imposed.<sup>158</sup> Based on reasoning set forth in *Harris* and *Casey*, courts and legislators may find justification in stating that Peace Corps service and the agency's facially neutral health policies still permit a Volunteer to use her own money to employ her constitutional right to an abortion.<sup>159</sup> Notwithstanding the logistical and financial realities that may constrain a pregnant Volunteer, these funding prohibitions, in the abstract, are arguably not an affirmative obstacle for a Volunteer.<sup>160</sup> The Volunteer still, in theory, retains her freedom of choice,

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<sup>154</sup> See *id.* at 326.

<sup>155</sup> See *id.* at 316.

<sup>156</sup> See *id.*; *Congress Should Lift the Ban*, *supra* note 17, at 2.

<sup>157</sup> See Peace Corps Act, 22 U.S.C. § 2501 (1961).

<sup>158</sup> See *id.*; *Harris*, 448 U.S. at 316–17. This choice to become a Peace Corps Volunteer goes beyond an obstacle “not of [the government’s] own creation.” *Harris*, 448 U.S. at 316; see § 2501.

<sup>159</sup> See Department of State, Foreign Operations, and Related Programs Consolidated Appropriations Act of 2012, Pub. L. No. 112–74, 125 Stat. 787, 1181–82 (2011); *Casey*, 505 U.S. at 877; *Harris*, 448 U.S. at 316–17 (“Although Congress has opted to subsidize medically necessary services generally, but not certain medically necessary abortions, the fact remains that the Hyde Amendment leaves an indigent woman with at least the same range of choice in deciding whether to obtain a medically necessary abortion as she would have had if Congress had chosen to subsidize no health care costs at all.”); PEACE CORPS VOLUNTEER PREGNANCY, *supra* note 79 (stating that when a Volunteer elects to have an abortion she will be “advised that she may make a withdrawal from her accrued readjustment allowance to pay for the procedure”).

<sup>160</sup> See *Casey*, 505 U.S. at 874; PEACE CORPS VOLUNTEER PREGNANCY, *supra* note 79, at 5. The *Casey* Court stated that:



leaving her rights un-infringed.<sup>161</sup> The Court in *Casey* stated that unless a state regulation is a substantial obstacle to “her right of choice, a state measure designed to persuade her to choose childbirth over abortion will be upheld if reasonably related to that goal.”<sup>162</sup> Congress, finding that a Volunteer’s right remains intact, need not justify its policy decision any further.<sup>163</sup> Likewise, Congress may argue that its regulation does “no more than create a structural mechanism by which the State . . . may express profound respect for the life of the unborn,” and as such, these prohibitive means used every year in appropriations legislation are justified by the ends served.<sup>164</sup>

In this sense, challengers to the Peace Corps’ current policy would do well to emphasize a new vantage point when employing the undue burden framework.<sup>165</sup> The crux of the analysis would not be a Volunteer’s choice to join the Peace Corps and to bear the attendant effects of the agency’s funding and health policies.<sup>166</sup> Rather, the focus would rest on the purpose behind the government’s policies, which create obstacles that become more difficult to justify in the context of abortions in dire cases of rape and life endangerment.<sup>167</sup>

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Numerous forms of state regulation might have the incidental effect of increasing the cost or decreasing the availability of medical care, whether for abortion or any other medical procedure. The fact that a law which serves a valid purpose, one not designed to strike at the right itself, has the incidental effect of making it more difficult or more expensive to procure an abortion cannot be enough to invalidate it. Only where state regulation imposes an undue burden on a woman’s ability to make this decision does the power of the State reach into the heart of the liberty protected by the Due Process Clause.

*Casey*, 505 U.S. at 874.

<sup>161</sup> See *Casey*, 505 U.S. at 874; *Roe*, 410 U.S. at 163, 165.

<sup>162</sup> See *Casey*, 505 U.S. at 878.

<sup>163</sup> See *id.* at 877; *Congress Should Lift the Ban*, *supra* note 17, at 1–2.

<sup>164</sup> See *Casey*, 505 U.S. at 877; *Congress Should Lift the Ban*, *supra* note 17, at 1–2.

<sup>165</sup> See *Casey*, 505 U.S. at 877; *Harris*, 448 U.S. at 316; *Roe*, 410 U.S. at 162–63.

<sup>166</sup> See *Harris*, 448 U.S. at 316–17; *Casey*, 505 U.S. at 877; PEACE CORPS VOLUNTEER PREGNANCY, *supra* note 79, at 5.

<sup>167</sup> See *Casey*, 505 U.S. at 877; *Harris*, 448 U.S. at 316–17; Crawford, *supra* note 105, at 1565.

B. *Selective Funding and the Need to Question Compelling Government Interests*

*To promote the State's profound interest in potential life, throughout pregnancy the State may take measures to ensure that the woman's choice is informed, and measures designed to advance this interest will not be invalidated as long as their purpose is to persuade the woman to choose childbirth over abortion.*

—*Planned Parenthood v. Casey*<sup>168</sup>

When Congress decides what to fund through annual appropriations legislation, it inherently expresses value judgments about what it finds to be a compelling interest.<sup>169</sup> When these legislative values are challenged in court, a judge will decide if the legislature's interest in providing or withholding funds is compelling enough to justify the limitation of another's rights.<sup>170</sup> When discussing the Hyde Amendment, the Court in *Harris* stated that the legislation's restrictions "place[d] no governmental obstacle in the path of a woman who chooses to terminate her pregnancy, but rather, by means of unequal subsidization of abortion and other medical services, encourage[d] alternative activity deemed in the public interest."<sup>171</sup> In the context of abortion, the state expresses a compelling interest in protecting fetal life, and uses this interest to justify the creation of certain frictions in a woman's path to abortion access.<sup>172</sup>

The compelling interest framework, however, should be altered when analyzing abortion in circumstances of rape, incest, and life endangerment—instances where the government's interests in protecting the health, life, and safety of the woman are heightened.<sup>173</sup> Fetal

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<sup>168</sup> *Casey*, 505 U.S. at 878.

<sup>169</sup> See Borders, *supra* note 41, at 130 (noting that "Congressional debates over the 1993 Hyde Amendment focused on ethical, moral, philosophical, sociological, and political concerns" instead of focusing solely on appropriations surrounding medically necessary abortion coverage). See generally Department of State, Foreign Operations, and Related Programs Consolidated Appropriations Act of 2012, Pub. L. No. 112-74, 125 Stat. 787 (2011) (selecting which programs to fund, and explicitly determining which programs should not receive funding).

<sup>170</sup> See *Harris*, 448 U.S. at 326; Butler, *supra* note 32, at 935.

<sup>171</sup> *Harris*, 448 U.S. at 315.

<sup>172</sup> See *Casey*, 505 U.S. at 878; *Harris*, 448 U.S. at 315–16.

<sup>173</sup> See *Casey*, 505 U.S. at 876–77; *Harris*, 448 U.S. at 316; Borders, *supra* note 41, at 143–44 (discussing the importance of state funding for abortions in instances of rape and quoting Congresswoman Nancy L. Johnson, who stated: "Rape is someone grabbing you, assaulting you, overwhelming you with fear for your life and then violating you in the most deeply personal and destructive way. Please, leave to the victim the decision as to whether

life arguments lose force in exigent circumstances.<sup>174</sup> Legislation such as the Hyde Amendment, as well as major Supreme Court cases like *Roe*, reflect the recalibration of state interests in fetal life by making exceptions where the woman's life is in jeopardy.<sup>175</sup> Forcing a Volunteer to carry a pregnancy to term after being raped or when her life is endangered does not comport with the mission of the Peace Corps or, by extension, the international development goals of the federal government.<sup>176</sup>

In considering agency goals, it is worth noting that funding abortion is less expensive than funding childbirth.<sup>177</sup> Every year Congress designates funds for medical expenses for both the mother and the child should a female Peace Corps Volunteer become pregnant and choose to maintain the pregnancy.<sup>178</sup> This calculus exposes the possibility that Peace Corps policies embody a moral or ethical judgment that abortion even in emergency circumstances is "per se morally objectionable" and that this moral objection is compelling enough to outweigh a Peace Corps Volunteer's interest in terminating her pregnancy.<sup>179</sup> Applying this compelling interest framework to the Peace Corp health care provision reveals a fundamental flaw in Congress's

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to carry or not to carry any possible product of such [a] violent, vicious and terrible act as that of rape").

<sup>174</sup> See *Casey*, 505 U.S. at 876-77; *Harris*, 448 U.S. at 316; *Borders*, *supra* note 41, at 143-44.

<sup>175</sup> See, e.g., Hyde Amendment, Pub. L. No. 95-205, § 101, 91 Stat. 1460, 1460 (1977); *Roe*, 410 U.S. 113, 150 ("Only when the life of the pregnant mother herself is at stake, balanced against the life she carries within her, should the interest of the embryo or fetus not prevail.").

<sup>176</sup> See *Congress Should Lift the Ban*, *supra* note 17, at 2; Lipton-Lubet *America's Angels*, *supra* note 24.

<sup>177</sup> *Beal*, 432 U.S. at 463 (Blackmun, J., dissenting).

<sup>178</sup> PEACE CORPS VOLUNTEER PREGNANCY, *supra* note 79, at 3-5. "The Peace Corps will provide, or pay the cost of, prenatal and obstetric care for pregnant V/Ts [Volunteer/ Trainees] or the pregnant wife of a V/T regardless of her citizenship or volunteer/non-volunteer status. . . ." *Id.* at 3. "The child of a V/T born during the V/T's service will receive the same health care and benefits as a V/T, for as long as the child resides with the V/T parent during service overseas." *Id.* at 4.

<sup>179</sup> See Michael Perry, *Why the Supreme Court Was Plainly Wrong in the Hyde Amendment Case: A Brief Commentary on Harris v. McRae*, 32 STAN. L. REV. 1113, 1115-16 (1980); Lipton-Lubet *America's Angels*, *supra* note 24.

hierarchy of interests.<sup>180</sup> Thus, Congress's decades-old justification for its Peace Corps abortion policy demands serious scrutiny.<sup>181</sup>

C. *Illegitimate Purpose and Control: Manipulating Peace Corps Policy as an Extension of U.S. Foreign Policy*

*For those of us who feel that abortion is taking innocent human lives, it is natural enough not to want abortions paid for by the Peace Corps funds and the Peace Corps program. But, in particular, when those funds are to be used to help underdeveloped nations, as is the major purpose of the Peace Corps, then it seems to me almost repugnant—well, totally repugnant—to allow this kind of payment . . . .*

—Senator Orrin Hatch<sup>182</sup>

In 1979, when Congress initially added the total ban on Peace Corps abortion funding to annual foreign operations appropriations legislation, Senator Orrin Hatch hardly concealed his abhorrence for this use of funds, arguing that using Peace Corps money for abortion would detract from the agency's mission abroad.<sup>183</sup> This perspective demonstrates the influence of conflicting political ideologies in abortion funding decisions.<sup>184</sup>

Shaping Peace Corps policy enables Congress to “alter the face the United States presents to the world.”<sup>185</sup> The Peace Corps was the product of the Cold War era and was born out of the notion of win-

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<sup>180</sup> See Borders, *supra* note 41, at 143–44; *Congress Should Lift the Ban*, *supra* note 17, at 2; Lipton-Lubet *America's Angels*, *supra* note 24.

<sup>181</sup> See Department of State, Foreign Operations, and Related Programs Consolidated Appropriations Act of 2012, Pub. L. No. 112–74, 125 Stat. 787, 1181–82 (2011); *Congress Should Lift the Ban*, *supra* note 17, at 1–2.

<sup>182</sup> 124 CONG. REC. 30, 884–86 (1978) (statement of Sen. Orrin Hatch). This quotation captures Senator Orrin Hatch's feelings surrounding an amendment under Title III of the Foreign Assistance and Related Programs Appropriations Act of 1979, approved October 18, 1978, to restrict Peace Corps funding for abortions. *Id.* The provision, which has since been included in annual foreign operations appropriations, was enacted in response to reports that approximately forty-five thousand dollars of Peace Corps funds were used for abortion-related expenses in 1977. *Id.* Every year since 1979, annual Foreign Operations appropriations, under the heading “Peace Corps,” have stated that “none of the funds appropriated under this heading shall be used to pay for abortions.” See 125 Stat. at 1181–82; Lipton-Lubet, *supra* note 5.

<sup>183</sup> 124 CONG. REC. 30, 884–86 (statement of Sen. Orrin Hatch).

<sup>184</sup> See *id.*; Ernst et al., *supra* note 28, at 765–66; *Congress Should Lift the Ban*, *supra* note 17, at 1–2.

<sup>185</sup> Heather Boonstra & Susan A. Cohen, *Of Gag Rules and Loyalty Oaths: Exporting Ideology at the Expense of Public Health and American Values*, 13 U.C. DAVIS J. INT'L L. & POL'Y 1, 2 (2006); see Peace Corps Act, 22 U.S.C. §§ 2501–2523 (1961); 125 Stat. at 1181–82; Rieffel, *supra* note 13, at 3–5.

ning “hearts and minds in the non-aligned developing countries.”<sup>186</sup> Sending Volunteers to developing countries might have been the first contact citizens of those countries have had with an American, and this would have inherently involved the spread of American values abroad.<sup>187</sup> Described as “one of the smallest instruments in the foreign policy toolkit of the United States,” the Peace Corps may be a tool for Congress to affect reproductive health policy relatively free from public scrutiny.<sup>188</sup> Through the appropriations process, Congress has the ability to affect both the kind of service Peace Corps Volunteers may provide in developing countries, and also what kind of medical care Volunteers, as federal employees, are entitled to receive.<sup>189</sup>

The Peace Corps is an agency whose budget is “proposed by the president and appropriated by Congress,” and where the head of the agency is “nominated by the president and confirmed by the Senate.”<sup>190</sup> As an independent government agency, however, the Peace Corps is theoretically more insulated from the influence of contentious politics.<sup>191</sup> “Supporters consider independence as essential to ensuring that the Peace Corps will not be used to advance the short-term goals of whatever administration is in power.”<sup>192</sup> Likewise, the public views this insulation from political forces as “critical to maintaining the trust and respect of the countries in which the Peace Corps operates.”<sup>193</sup> Yet partisan agendas may, and apparently do, influence Peace Corps policy.<sup>194</sup> Critics cite that “[f]ew agencies rival the Peace Corps for percentage of political appointees filling mission-critical positions.”<sup>195</sup> Unequivocal funding prohibitions in every annual Foreign Operations appropriations bill, which allow no carve-out exceptions for rape, incest, or life endangerment, demonstrate that

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<sup>186</sup> Rieffel, *supra* note 13, at 1.

<sup>187</sup> *See id.* at 1–3.

<sup>188</sup> *See id.* at 1, 4, 5.

<sup>189</sup> *See* Suzanne Petroni & Patty Skuster, *The Exportation of Ideology: Reproductive Health and Rights in U.S. Foreign Policy*, 35 HUMAN RIGHTS 9, 9–10 (2008); Rieffel, *supra* note 13, at 3–5.

<sup>190</sup> Rieffel, *supra* note 13, at 5.

<sup>191</sup> *See* Peace Corps Act, 22 U.S.C. §§ 2501–2523; Rieffel, *supra* note 13, at 5.

<sup>192</sup> Rieffel, *supra* note 13, at 5.

<sup>193</sup> *Id.*

<sup>194</sup> *See id.*

<sup>195</sup> Robert L. Strauss, *Think Again: The Peace Corps*, FOREIGN POLICY (Apr. 22, 2008), available at [http://www.foreignpolicy.com/articles/2008/04/21/think\\_again\\_the\\_peace\\_corps](http://www.foreignpolicy.com/articles/2008/04/21/think_again_the_peace_corps).

the vision of the Peace Corps as an independent agency of the U.S. government may be a myth.<sup>196</sup>

Bipartisan support for the Peace Corps has continually been strong.<sup>197</sup> In the minds of lawmakers, the agency exemplifies the “optimism” and the “can-do spirit” of the United States and the operational costs are miniscule as compared to government expenditures for other development organizations.<sup>198</sup> This favorable reputation in the eyes of many lawmakers, though deserved in many respects, may facilitate a continued ignorance of stringent abortion funding policies and a continued use of the Peace Corps as an instrument of diplomacy.<sup>199</sup>

If this is the case, using Peace Corps policy to impose obstacles on Volunteer access to emergency abortions in furtherance of domestic and foreign policy goals is an illegitimate government purpose.<sup>200</sup> The Court in *Casey* stated that a state regulation with the “purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion. . . . is invalid because the means chosen by the State to further the interest in potential life must be calculated to inform the woman’s free choice, not hinder it.”<sup>201</sup> The Court reasoned that even a statute that purports to promote a valid state interest “cannot be considered a permissible means of serving its legitimate ends” if the statute purposefully places a substantial obstacle in the way of a woman’s choice to terminate her pregnancy pre-viability.<sup>202</sup> Peace Corps’ abortion policy, which gravely and needlessly affects Volunteer health by excluding exceptions for emergency circumstances, exists for the sole purpose of hindering Volunteer access to abortion.<sup>203</sup>

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<sup>196</sup> See Rieffel, *supra* note 13, at 5; see also Boonstra & Cohen, *supra* note 185, at 8 (discussing the need for efforts “to advance and preserve ‘best practices’ in public health” so that these practices “may resume their rightful priority over the promotion of ideology”).

<sup>197</sup> See Rieffel, *supra* note 13, at 1.

<sup>198</sup> See *id.* at 1, 3; Strauss, *supra* note 195. In the Fiscal Year 2012 Foreign Operations Consolidated Appropriations Bill, Congress appropriated \$375 million dollars for the Peace Corps annual operating budget. Department of State, Foreign Operations, and Related Programs Consolidated Appropriations Act of 2012, Pub. L. No. 112–74, 125 Stat. 787, 1181–82 (2011).

<sup>199</sup> See Rieffel, *supra* note 13, at 1; Strauss, *supra* note 195 (commenting on complacency and the need for policy responsiveness of the Peace Corps, stating that “[t]o become effective and relevant, the Peace Corps must now give up on the myth that its creation was the result of an immaculate conception that can never be questioned or altered”).

<sup>200</sup> See *Casey*, 505 U.S. at 877; Perry, *supra* note 179, at 1116.

<sup>201</sup> *Casey*, 505 U.S. at 877.

<sup>202</sup> See *id.*; Crawford, *supra* note 105, at 1565–66.

<sup>203</sup> See Crawford, *supra* note 105, at 1565–66; Perry, *supra* note 179, at 1116; Hansen, *supra* note 23, at 153–54; *Discriminatory Restrictions on Abortion Funding*, *supra* note 18, at 7.

Even deferring to the State's purported interests in protecting potential life, conserving the public fisc, and administering agencies according to certain goals, existing Peace Corps policies flounder within this rational basis framework and are per se "undue."<sup>204</sup>

#### IV. LOOKING TO THE FUTURE: THE NEED TO DE-POLITICIZE ESSENTIAL VOLUNTEER MEDICAL CARE AND TO EFFECT PERMANENT CHANGE IN PEACE CORPS POLICY

There cannot be a change in the Peace Corps' abortion policy until the legislature separates Volunteer health policy from abortion politics.<sup>205</sup> Funding for abortions in the dire circumstances of rape, incest, and life endangerment should exist in a political vacuum and should be conceptualized as a public health concern.<sup>206</sup> Since the initial passage of the Hyde Amendment, pro-life legislators have benefited from the assurance "that once a member [of Congress] voted to restrict the use of federal funds for abortions in one area, restrictions in other areas (e.g., Department of Defense or the Peace Corps) were hardly different."<sup>207</sup> Thus, by 1980, after the Court's decision in *Harris v. McRae* bolstered restrictions on annual legislation, abortion politics became somewhat synonymous with appropriations politics.<sup>208</sup> The continued existence of this legislation, which serves only to thwart Volunteer access to essential medical care without any checkpoint, is unacceptable.<sup>209</sup> Peace Corps funding of abortions in emergency circumstances must be taken out of the appropriations process and be

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<sup>204</sup> See *Casey*, 505 U.S. at 877; Butler, *supra* note 32, at 937; Crawford, *supra* note 105, at 1565-66; Perry, *supra* note 179, at 1116.

<sup>205</sup> See SCOTT H. AINSWORTH ET AL., ABORTION POLITICS IN THE U.S. CONGRESS: A VIEW ACROSS COMMITTEES AND OVER TIME 7, 10 (2001); Annual Meeting of the American Political Science Foundation, in S.F., Cal., Aug. 30-Sept. 2, 2001; *Congress Should Lift the Ban*, *supra* note 17, at 1.

<sup>206</sup> See *Congress Should Lift the Ban*, *supra* note 17, at 1-2; *Discriminatory Restrictions on Abortion Funding*, *supra* note 18, at 7.

<sup>207</sup> See AINSWORTH ET AL., *supra* note 205, at 7.

<sup>208</sup> See *id.* In the 1970s, approximately 6.5% of all abortion related bills came from appropriations committees. *Id.* By 1986, in the House, appropriations committee bills accounted for a quarter of all abortion related legislative activity, a level that remained consistent into the 1990s. *Id.*

<sup>209</sup> See *Planned Parenthood v. Casey*, 505 U.S. 833, 877 (1992); *Congress Should Lift the Ban*, *supra* note 17, at 1-2; *Discriminatory Restrictions on Abortion Funding*, *supra* note 18, at 1, 7.

permanently codified into law within the Peace Corps' enabling statute.<sup>210</sup>

There is a dire need to reinvigorate the Peace Corps' status as an independent administrative agency that is more responsive to health care needs and the realities that Volunteers experience while serving.<sup>211</sup> The fact that Congress has recently amended the Peace Corps' enabling statute to espouse new Volunteer safety and security measures illustrates that they are willing to adapt policies to best meet the stated needs of Volunteers.<sup>212</sup> Female Volunteers need a comprehensive range of reproductive health options, including fully funded abortions when they are victims of rape, incest, or when their lives are in danger as a result of a pregnancy.<sup>213</sup> This should be purely an issue of Volunteer health, just like any other ailment or injury encountered while serving abroad.<sup>214</sup> Peace Corps Volunteer health and safety pol-

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<sup>210</sup> The Peace Corps Act, 22 U.S.C. §§ 2501–2523 (1961); see AINSWORTH ET AL., *supra* note 205, at 7, 10; Butler, *supra* note 32, at 935; *Discriminatory Restrictions on Abortion Funding*, *supra* note 18, at 1.

<sup>211</sup> See Rieffel, *supra* note 13, at 4–5. Allowing Peace Corps Volunteer reproductive health policy to be determined every year through the appropriations process ignores the realities of why certain policies, such as abortion funding for instances of rape, are needed. See Butler, *supra* note 32, at 935; Kay, *supra* note 45, at 383.

Determining congressional intent in reproductive health law is an arduous task, particularly since legislative history is largely indiscernible and often contains barely visible, but significant, gender stereotypes about women and motherhood. The danger exists that gender stereotypes are so ingrained that legislators do not recognize that such assumptions form the basis of a policy.

Kay, *supra* note 45, at 383.

<sup>212</sup> See Kate Puzey Peace Corps Volunteer Protection Act of 2011, Pub. L. No. 112–57, 125 Stat. 736, 736–46 (codified at 22 U.S.C. § 2507a); *Sexual Assault Fact Sheet*, *supra* note 79. Unfortunately, there is still a disconnect between Peace Corps safety policy for sexual assault and abortion policy, which makes little sense based on the natural connection between the two. See *Congress Should Lift the Ban*, *supra* note 17, at 2. This disconnect permits even knowledgeable bystanders to say, for example: “[t]wo components of Volunteer support—in-country training and medical care—receive almost universal acclaim and therefore should probably not be tinkered with at this time.” Rieffel, *supra* note 13, at 8. This perspective illustrates that perhaps Volunteer medical care is not being carefully scrutinized, and moreover, that stakeholders and knowledgeable observers are not even conceptualizing emergency abortion funding as a needed service in the scope of medical services offered. See *id.* This quotation likewise shows the ideological disconnect between thinking about abortion as a political issue and as a health issue, both in the context of the Peace Corps and otherwise in American society. See *id.*; *Discriminatory Restrictions on Abortion Funding*, *supra* note 18, at 1–3.

<sup>213</sup> See Schecter, *supra* note 1 (noting that the Peace Corps will pay for pregnancy counseling, related health expenses, and travel, but not for the abortion procedure, thereby inherently leaving a pregnant Volunteer without a full range of medical care options).

<sup>214</sup> See § 2504(c); *Sexual Assault Fact Sheet*, *supra* note 79.



icy is being dangerously conflated with the concepts of the Peace Corps "foreign policy," as illustrated by Congressional records.<sup>215</sup>

De-politicizing Peace Corps health policy is essential to the vitality of the agency.<sup>216</sup> Very clearly, the federal government holds a strong interest in the functionality and success of the Peace Corps, or it would not continue to expend funds to maintain the organization.<sup>217</sup> In fact, it could be argued that unintended pregnancies, especially when they are the product of sexual assault, disable a Volunteer from performing the tasks she was sent abroad to accomplish, and thus, compromise the overarching goals of a U.S. government agency.<sup>218</sup> A Volunteer's access to a funded abortion when she has been raped is in

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<sup>215</sup> See 124 CONG. REC. 30, 884 (1978) (statement of Sen. Daniel Inouye). In 1978, surrounding Senate discussions of adopting restrictions on Peace Corps abortion funding, Senator Daniel Inouye discussed funding of abortions for Volunteers in terms of health policy, essentially treating unwanted pregnancy as any other medical condition, stating:

The Peace Corps, since its inception, has had a policy of providing medical assistance to the members of the Peace Corps staff and Volunteers, many of whom serve in remote areas.

If I should be in the Peace Corps and find myself with a broken leg, the Peace Corps medical officer would provide the necessary medical attention. If it calls for specialized care, he may take me to some hospital in the host country, or, if the host country cannot provide this medical care, to some other hospital in some other country.

In this respect, last year, a few of the women in the Peace Corps found that their circumstances required a termination of pregnancy. Many of these women were working in Africa, where hospitals were not readily available; so, in order to carry out the policy of the Peace Corps, the Peace Corps provided transportation to the nearest medical facility to bring about the termination of pregnancy. The medical expenses involved were less than \$5000.

*Id.*

<sup>216</sup> See Rieffel, *supra* note 13, at 5; Hansen, *supra* note 23, at 1554; *Discriminatory Restrictions on Abortion Funding*, *supra* note 18.

<sup>217</sup> See §§ 2501–2523.

<sup>218</sup> See *id.*; Ponder & Nothnagle, *supra*, note 61, at 390. The "Congressional Declaration of Purpose" setting out the mission of the agency in The Peace Corps Act states:

The Congress of the United States declares that it is the policy of the United States and the purpose of this chapter to promote world peace and friendship through a Peace Corps, which shall make available to interested countries and areas men and women of the United States qualified for service abroad and willing to serve, under conditions of hardship if necessary, to help the peoples of such countries and areas in meeting their needs for trained manpower, particularly in meeting the basic needs of those living in the poorest areas of such counties, and to help promote a better understanding of the American people on the part of the peoples served and a better understanding of other peoples on the part of the American people.

this sense beneficial to the mission of the Peace Corps, as it allows her to continue to serve.<sup>219</sup> Currently, Peace Corps policy does not allow a pregnant Volunteer to continue her service past the beginning of the third trimester, and without access to an abortion if she has no private funds available, she will be forced to abandon her service mission.<sup>220</sup> As it stands, this policy de-prioritizes and undermines the contribution of female Volunteers both abroad and at home and compromises the vitality of the Peace Corps' mission: to promote peace through the work of skilled, able Volunteers abroad.<sup>221</sup> Politicians and policy makers cannot simultaneously praise and diminish the contribution of these women.<sup>222</sup>

A full range of reproductive related procedures for Volunteers is a fundamental component of the comprehensive health care that the government commits to providing to Volunteers when they begin their service.<sup>223</sup> The Peace Corps Act states that "Volunteers shall receive such health care during their service."<sup>224</sup> In the Definition section of the Act, the term "health care" includes: "all appropriate examinations, preventive, curative and restorative health and medical care, and supplementary services when necessary."<sup>225</sup> When emergency abortion funding is framed as a public health issue, as it is incorporated in other legislation, there is no question that the Peace Corps should cover these medical expenses for its Volunteers.<sup>226</sup>

## CONCLUSION

Abortion funding for Peace Corps Volunteers in cases of rape, incest, or life endangerment should be uncontroversial. Restrictions on funding for Volunteer abortions should be eliminated to reconcile the reproductive health rights of Volunteers with those of their domestic counterparts. American women living in the United States, who likewise receive health care from the government, including fe-

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<sup>219</sup> See § 2501; Ponder & Nothnagle, *supra*, note 61, at 390.

<sup>220</sup> PEACE CORPS VOLUNTEER PREGNANCY, *supra* note 79, at 4; see Ponder & Nothnagle, *supra*, note 61, at 390.

<sup>221</sup> See Elaine Chao, *Our Best Diplomats: Women in the Peace Corps*, TIME (Mar. 12, 2012), <http://ideas.time.com/2012/03/19/our-best-diplomats-women-in-the-peace-corps> (discussing the important contribution of female Peace Corps Volunteers abroad and when they return to the U.S. and continue to offer vital agency support); Hansen, *supra* note 23, at 154.

<sup>222</sup> See Chao, *supra* note 221; *Congress Should Lift the Ban*, *supra* note 17, at 1–2.

<sup>223</sup> See §§ 2504(e), 2522; *Congress Should Lift the Ban*, *supra* note 17, at 1.

<sup>224</sup> § 2522(d).

<sup>225</sup> *Id.*

<sup>226</sup> See *id.*; Lipton-Lubet *America's Angels*, *supra* note 24.

male inmates incarcerated in federal prisons, enjoy the right to a federally funded abortion when they are the victims of rape or incest, or when their lives would be risked by carrying a pregnancy to term. This is not the case for the nearly six thousand female Volunteers serving abroad in the Peace Corps today. There is no sound basis for the differential treatment which compromises the health and safety of Peace Corps Volunteers, women who give up the relative comforts of the United States, and place their well-being and safety at risk during two years of service abroad.

Furthermore, Volunteer reproductive health and safety should not be subject to the whims of politicians. Agency policy should eschew the political motives of American legislators and prioritize the health and safety of Peace Corps Volunteers around the globe with the ultimate goal of providing comprehensive medical care. Where traditional pathways of challenging these funding restrictions may fail in attaining equal treatment for women serving in the Peace Corps, a new avenue must be forged. This unjust restriction must be replaced by a permanent codification of agency policy within the Peace Corps Act that removes this ban on funding in such dire circumstances.